INDEX.

AUTHORITIES CITED.

Cases

Statutes

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No.

MERCURY PRESS, INC., *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI.

To the United States Court of Appeals for the District of Columbia Circuit.

To the Honorable, The Chief Justice and the Associate Justices of the United States:

Petitioner, Mercury Press, Inc., hereby petitions for the issuance of a Writ of Certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, whose judgment of December 20, 1948, affirmed the judgment below. Petition for rehearing filed January 3, 1949, was denied April 27, 1949.

Statement of the Matter Involved.

Petitioner imported newsprint from Canada which on arrival was stored in a warehouse some distance from its printing plant, pending the time it could be put to the use for which imported. The District of Columbia exacted a tax on such imported newsprint on the same basis as on other tangible personal property in the District on the tax date.

A single question is presented:

Question Presented.

Are imports taxable in the District of Columbia under a statute which provides for a tax on "all tangible personal property?"

Reasons For Allowance of The Writ.

This case presents important questions affecting Constitutional limitations on the taxation of imports, and on the powers of Congress over District of Columbia affairs.

The decision below is in direct conflict with *Hooven & Allison* v. *Evatt*, 324 U. S. 652, as to the taxation of imports, and with the above case as well as *Atlantic Cleaners & Dyers* v. *U. S.*, 286 U. S. 427, and *Loughborough* v. *Blake*, 5 Wheat. 317, 319, as to the powers of Congress.

A novel question is presented as to whether the exclusive grant of legislative power over District of Columbia affairs, gives to Congress, when legislating for such District, powers denied to the States and specifically withheld from the national legislature.

The debate on the recent Sales Tax Bill indicates that Congress itself is uncertain, if it does not positively disagree with the Court of Appeals, as to the extent of its powers in enacting tax laws for the District of Columbia.

While Congress has unlimited powers in dealing with matters affecting interstate commerce, the Chairman of the Senate District Committee, and the Senator in charge of the recent Sales Tax Bill, both asserted that Congress may

not impair interstate commerce through the operation of District tax statutes. No Senator challenged that position.

> Mr. McGrath. . . . it is not within our power constitutionally to make a tax apply to anything in interstate commerce." Congressional Record, May 12, 1949, p. 6192
>
> Mr. Hunt. I may say to the distinguished Senator that we have in mind the exemption of any tangible personal property to which interstate commerce laws apply. In other words, it would not be lawful under the Constitution. . . . Congressional Record, May 13, 1949, p. 6282.

But the United States Court of Appeals for the District of Columbia has held that Congress may impair interstate commerce in taxing for the District, (*Nield* v. *District of Columbia*, 71 App. D. C. 306, 110 F(2) 246); which decision has now been broadened by that Court to hold that the Congress may disregard positive constitutional limitations on the taxation of imports when legislating for the District of Columbia.

Jurisdiction.

The jurisdiction of this Court to grant the Writ is invoked under Judicial Code Section 240 as Amended (Title 28 U. S. C. A. Section 347). The United States Court of Appeals for the District of Columbia Circuit denied petition for rehearing under date of April 27, 1949, and this petition is filed within the statutory period. (28 U.S.C.A. 350).

Prayer For Relief.

Wherefore, the petitioner, by its counsel, prays the issuance of a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit to the end that the judgment may be reversed and for such other and further relief as to the Court may seem appropriate.

HERBERT G. PILLEN,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION.

Statement of Facts.

Petitioner is engaged in the printing business in the District of Columbia and in that connection imported newsprint from Canada in large rolls, weighing from 500 to 1000 pounds, and wrapped in heavy waterproof paper. This newsprint was stored in a warehouse. It was not brought to Petitioner's printing plant until ready to be put to the use for which imported, viz., the printing of publications for others.

In its personal property tax return for the fiscal year ending June 30, 1948, petitioner showed among other things, the following:

> "Imported newsprint in original packages in warehouse $36,393.79."

The Assessor made an assessment upon the basis of all the property reported, including the newsprint referred to above. The tax was paid under protest and the case proceeded thereafter in accordance with the usual procedure of cases of this kind.

The statute under which the assessment was made reads as follows:

Statute Involved.

> "On all tangible personal property, assessed at a fair cash value (over and above the exemptions * provided in section 47-1208) including vessels, ships, boats, tools, implements, horses, and other animals, carriages, wagons and other vehicles, there shall be paid to the Collector of Taxes of the District of Columbia the rate of tax provided by law."

D. C. Code, Title 47, Sec. 1207.

---

* The exemptions run to charitable institutions, libraries, etc., and are of no application here.

Argument.

The proceeds of a tax on imports must go to national purposes.

Quite recently this court said, with reference to the Constitutional provisions dealing with the limitations on Federal and State taxation of imports:

> "These provisions were intended to confer on the national government the exclusive power to tax importations of goods into the United States."
>
> *Hooven & Allison* v. *Evatt*, 324 U. S. 652, 656.

The proceeds of the tax here involved do not go "to pay the debts and provide for the common defense and general welfare of the United States" as required by Article I, Section 8, nor what amounts to the same thing, do they go "for the use of the Treasury of the United States" as required by Section 10.*

On the contrary the proceeds go solely to the payment of District of Columbia obligations, since the taxing statute provides:

> "All taxes collected shall be paid into the Treasury of the United States, and the same . . . shall be disbursed for the expenses of said District . . ."
>
> D. C. Code, Title 47, Sec. 309.

Congress lacks power to tax imports for local purposes.

Clearly Congress did not enact the tax statute here involved in its capacity as a national legislature: The tax is

---

* "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;"

Art. I, Sec. 8, Cl. 1.

"No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports shall be for the use of the Treasury of the United States; and all such laws shall be subject to the Revision and control of the Congress."

Art. I, Sec. 10, Cl. 10.

not uniform, and the proceeds do not go for national purposes as required by Section 8 of Article I.

If, on the other hand, it be argued that Congress has powers equal to those of State legislatures when enacting laws for the District of Columbia, the answer is clear: A similar statute enacted by a State could not reach imports.

Hooven & Allison v. *Evant*, supra.

It follows therefore that in order for Congress to have power to enact a tax on imports for the sole use of the District of Columbia, it must have powers greater than the combined State and national powers when it acts in its capacity as District of Columbia legislature. There is nothing in the grant to indicate unlimited power:

> "Congress shall have power . . . to exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by cession of particular States, and the Acceptance of Congress, become the seat of the government of the United States, . . ."
> Art. I, Sec. 8, Cl. 17.

It will be remembered that Congress is denied the power to pass an ex post facto law or a bill of attainder by Article I, Section 9, Clause 3, and the States are denied such power under Article I, Section 10, Clause 1. Can Congress pass an ex post facto law or bill of attainder for the District of Columbia? The decisions are to the contrary.

> *U. S.* v. *More*, 7 U. S. (3 Cranch) 159 (See Circuit Court decision in footnote p. 160) *Curry* v. *D. C.* 14 App. D. C. 423, 439.

The law would seem to be that where limitations apply to both the national Congress and to the State legislatures, they apply with equal force to the Congress when acting as local legislature for the District of Columbia. As stated by this Court, when acting in this capacity Congress has all the powers of legislation which may be exercised by a State

in dealing with its affairs, "so long as other provisions of the Constitution are not infringed."

Atlantic Cleaners & Dyers v. *U. S.*, 286 U.S. 427, 435.

The words "the net produce of all duties and imposts, laid by any State on imports or exports shall be for the use of the Treasury of the United States" as used in Section 10 of Article I, mean exactly the same thing as do the words "to pay the debts and provide for the common defense and general welfare of the United States" as used in Section 8 of that Article. It follows, as this Court held in the *Hooven & Allison* case, that all proceeds from the collection of taxes on imports—whether by the national government or by a State government (other than for inspection purposes)—must go to national purposes.

However, the Court of Appeals by-passed the problem by holding that since the uniformity rule does not apply to excise taxes when applied by Congress to the territories, the rule of uniformity does not apply to a tax on imports in the District of Columbia.

But this case does not involve an excise tax, it involves a tax on an import. There is no limitation on the States enacting excise taxes. There are positive limitations on State enactments of taxes on imports. The power of Congress need only be equal to that of a State, as to District of Columbia matters, to warrant the enactment of an excise tax for the District of Columbia.

As to imports, in an early case Chief Justice Marshall wrote:

> "The District of Columbia . . . is not less within the United States, than Maryland, or Pennsylvania, and it is not less necessary, on the principles of our constitution that uniformity in the imposition of imposts, duties and excises should be observed in the one than in the other."

Loughborough v. *Blake*, 5. Wheat, 317, 319.

While it may be that Congress can lay down whatever conditions it likes in accepting a new territory, the District of Columbia acquired every Constitutional protection while a part of two states, and those States and the people in them did not relinquish any of those rights and privileges by cession of the area for a seat of government.

Downes v. *Bidwell,* 182 U. S. 244.

In *McAllister* v. *U. S.,* 141 U. S. 174, it was held that the constitutional provision in respect to the tenure of judicial office did not apply to territorial offices, while in *O'Donoghue* v. *U. S.* 289 U. S. 516, the courts of the District of Columbia were held to be constitutional courts.

Furthermore, there is no power in the national Congress to tax imports in one State for the sole benefit of that State. There likewise is no power in Congress to tax imports in the District of Columbia for the sole benefit of the District of Columbia.

The tax here involved being an indirect tax may not be included by implication within a statute patently providing solely for direct taxes.

That Congress did not rely on the general name "personal property" to determine what items should be subject to taxation is shown by the fact that the statute specifically names articles about which there might be doubt: vessels, ships, tools, animals, etc. Imports are not mentioned, even though this item is given a special character by virtue of Constitutional limitations on taxation. A character which developed prior to the enactment of this tax statute, 1902.

It is difficult to conceive that Congress intended the name "personal property" as used in the District of Columbia tax statute to have a meaning different from its meaning in every other tax statute. If Congress enacted legislation providing that all personal property shall be subject to a direct tax, properly apportioned, it is obvious the general name "personal property" could not include

an import. Likewise, when a State provides a tax on all personal property, that term is not broad enough to include imports.

By historical background, because of Constitutional limitations, a tax on an import, while it retains its character as an import, is an indirect tax, that is, a tax on the act of importing.

The tax here involved was imposed under a statute clearly intended to impose direct taxes only.

As said by Judge Story:

> "It is as I conceive, a general rule in the interpretation of all statutes levying taxes or duties upon subjects or citizens not to extend their provisions by implication, beyond the clear import of the language used, or enlarge their operation so as to embrace matters not specifically pointed out, although standing upon a close analogy."
>
> *U. S.* v. *Wigglesworth*, 2 Story 369, 373, Fed. Cases No. 16,690.

Opinion Below.

The opinion of the Board of Tax Appeals for the District of Columbia was not published. It appears in the Record at Page 3. The opinion of the United States Court of Appeals for the District of Columbia, appears in the Record at page 21.

Conclusion.

Wherefore, Petitioner respectfully prays for the issuance of a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

HERBERT G. PILLEN,
522 Munsey Building,
Washington 4, D. C.,
Attorney for Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 800

MERCURY PRESS, INC., *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

VERNON E. WEST,
Corporation Counsel, D. C.,
CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.,
GEORGE C. UPDEGRAFF,
Assistant Corporation Counsel, D. C.,
Attorneys for Respondent,
District Building,
Washington 4, D. C.

DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

INDEX

Subject Index

Cases Cited

OTHER AUTHORITIES

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 800

MERCURY PRESS, INC., *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

OPINIONS BELOW

The opinions of the Board of Tax Appeals for the District of Columbia (R. 5-7) and the United States Court of Appeals for the District of Columbia Circuit (R. 21-23) are not yet reported.

GROUNDS OF JURISDICTION

Petitioner has not stated the grounds on which the jurisdiction of this Court is invoked (Rule 27(c)).

SPECIFICATION OF ERRORS

Petitioner has not made a specification of errors (Rule 27 (e)).

SUMMARY OF ARGUMENT

Petitioner has not stated the grounds on which the jurisdiction of this Court is invoked nor made a specification of errors. Petitioner has not complied with Rules 27 and 38 of this Honorable Court which is sufficient reason for denying the petition.

The question presented is not one of general importance. In substance, the question presented is whether the Congress of the United States has power to and has imposed a tax upon certain tangible personal property in the District of Columbia. The Court of Appeals pointed out (R. 23) that clearly the Congress had power to impose the tax in dispute, and it did so.

The Federal Congress, in the exercise of its plenary power to legislate for the District of Columbia in all cases whatsoever, is not restricted by any of the constitutional limitations applicable to the several States.

Cases relied upon by petitioner in support of its contention that Congress did not have power to impose the tax here involved are not applicable. The argument of petitioner that the tax in this case was imposed upon imports and, under Article I, Sec. 8, Cl. 1, of the Constitution, the proceeds of such tax are required to be used to pay the debts and provide for the common defense and general welfare of the United States is unsound. The tax involved was imposed upon tangible personal property used in petitioner's business in the District of Columbia (R. 3, Finding 1).

ARGUMENT

I

Reasons Why the Writ Should be Denied.

Petitioner has not complied with Rules 27 and 38 of this Honorable Court which is sufficient reason for denying the

petition. *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U. S. 175, 178.

The statute here involved is confined in its application solely to tangible personal property in the District of Columbia imported from Canada, and, therefore, the question presented is not one of general importance. *Layne & Bowler Corp.* v. *Western Well Works*, 261 U. S. 387, 393.

The question presented is, in substance, whether the Congress of the United States has imposed a tax upon the tangible personal property involved. It is respectfully submitted that this question does not present any of the special and important reasons why this Honorable Court should review the decision of the United States Court of Appeals in this case. The constitutional limitations upon the powers of the respective States, and upon the Congress of the United States with rspect to the uniformity of duties, imposts and excises imposed under Article I of Sec. 8, Cl. 1 of the Constitution are not involved.

II

In Legislating for the District of Columbia, Congress possesses full and Unlimited Power to Select any Property, Including that in Interstate Commerce and that Imported, for Taxation.

The statute involved in this case was enacted by the Federal Congress in the exercise, under Article I, Sec. 8, Cl. 17 of the Constitution, of its plenary power to legislate for the District of Columbia *in all cases whatsoever*. In so legislating, Congress acts as a legislature of national character, unrestricted by any of the Constitutional limitations applicable to the several States. *Neild et al.* v. *District of Columbia*, 71 App. D. C. 306, 110 F. 2d 246.

Petitioner states that the question presented is:

> "Are imports taxable in the District of Columbia under a statute which provides for a tax on 'all tangible personal property'?"

After carefully considering the various contentions of petitioner which included references to many decisions of this Court and of the United States Court of Appeals, Mr. Justice Prettyman, speaking for the Court of Appeals, clearly expressed what, we submit, is unquestionably the law (R. 22, 23):

> "* * * There is no constitutional prohibition upon the Federal Government in respect to the taxation of imports. Under that view of the local legislative functions, therefore, there was ample power for the tax in the case at bar."[1]
>
> * * *
>
> "Thus we think that Congress had constitutional power to impose the tax here disputed. It seems equally clear that it did so. The tax applies, in the language of the statute, to 'all tangible personal property', with exceptions and exemptions which do not include imports."

Petitioner contends, in stating its reasons relied upon for the allowance of the writ of certiorari, that the decision below is in direct conflict with three cases decided by this Court as to the powers of Congress. The case of *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, rehearing denied 325 U. S. 892, involved, *inter alia*, the power of the State of Ohio to tax imported property. Far from supporting petitioner's attack on the statute involved, the *Hooven & Allison* Co. case is recognition of the fact that the purpose of Article I, Sec. 10, Cl. 2 of the Constitution "is to protect the exclusive power of the national government to tax imports" (324 U. S. 664). In this case, of course, that power of the

---

[1] The statement that "There is no constitutional prohibition upon the Federal Government in respect to the taxation of imports" is true even where the proceeds of a tax such as this are used for local purposes rather than purposes of the Federal Government. See *Binns* v. *United States*, 194 U. S. 487.

national government has not been affected, and it was the Congress of the United States which enacted the tax statute involved.

The case of *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, was a suit brought by the United States against appellants to enjoin them from continuing in the District of Columbia an alleged conspiracy in restraint of trade and commerce contrary to the Sherman Anti-Trust Act. Insofar as that case expresses the power of Congress over the affairs of the District of Columbia it is against the contentions of petitioner. This Honorable Court said in that case, referring to the plenary power of Congress to legislate for the Disstrict of Columbia (286 U. S. 434):

> "* * * Under that clause, Congress possesses not only every appropriate national power, but, in addition, all the powers of legislation which may be exercised by a state in dealing with its affairs, so long as other provisions of the Constitution are not infringed. * * *"

The remaining case of *Loughborough* v. *Blake*, 5 Wheat. 317, involved the question whether Congress has a right to impose a direct tax on the District of Columbia. This Court concluded that the Congress had such power. The contention of petitioner in the present case with respect to the point decided in the *Loughborough* case is, as was the situation in the later case of *Gibbons* v. *District of Columbia*, 116 U. S. 404, founded on a misunderstanding of the *Loughborough* case. This Court said in the *Gibbons* case (116 U. S. 407), referring to the *Loughborough* case:

> "The point there decided was that an Act of Congress, laying a direct tax throughout the United States in proportion to the census directed to be taken by the Constitution, might comprehend the District of Columbia; and the power of Congress, legislating as a local Legislature for the District,

> to levy taxes for district purposes only, in like manner as the Legislature of a State may tax the people of a State for state purposes, was expressly admitted, and has never since been doubted. * * *"

The error of petitioner in this respect results from its persistence with the argument that the tax here involved is "a tax on an import" (Pet. Brief, p. 8). The tax clearly is a direct tax upon "tangible personal property".

Petitioner cites *Downes* v. *Bidwell*, 182 U. S. 244. That case was an action to recover duties upon certain oranges consigned to plaintiff at New York and brought there from Puerto Rico. One of the questions was whether Puerto Rico was a foreign country, or a part of the United States. This Court concluded that Puerto Rico was a territory "appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution"; that the statute there involved was constitutional, and that the plaintiff could not recover the import duties exacted.

None of the remaining cases cited by petitioner are applicable to the question presented.

Petitioner refers to comments made by two Senators on May 12 and May 13, 1949, during debate of the proposed District of Columbia Sales Tax Act (H.R. 3704, 81st Congress) as indicative of some misunderstanding on the part of those Senators with respect to the power of Congress in legislating for the District of Columbia. There is no such misunderstanding. The record discloses (95 Cong. Rec. 6283), for example, that Senator Hunt, whose remarks are partially quoted on page 3 of the petition filed herein, was answering a question propounded by Senator O'Conor with repect to exemptions covered under Sec. (m), page 13, of the bill (H.R. 3704). That section exempts from the sales tax: "(m), Sales which a State would be without power to tax under the limitations of the Constitution of the United States." An identical exemption was con-

tained in Sec. 3(r) of Title I of the proposed District of Columbia Sales and Compensating Use Tax Act of 1948 (S. 843, 80th Congress) and Senate Committee Report No. 1467, dated June 3, 1948, 80th Congress, 2d Sess., stated the following with respect thereto (p. 2):

> "The bill also exempts from the tax sales which the States would be without power to tax under the limitations of the Federal Constitution. The commerce clause of the Federal Constitution is not a limitation on the power of the Congress in legislating in its national capacity for the District of Columbia. For this reason, the committee believes that it is advisable to provide for the exemption of sales which the States could not tax because of the exclusive constitutional power conferred upon the Congress to regulate commerce among the States. By so providing this exemption, the sales tax law for the District will have no broader application than, and would be to that extent in uniformity with, sales tax laws enacted by some of the States."

III

The Requirement of Article I, Sec. 10, cl. 2 of the Constitution that proceeds of a tax on imports must be "for the use of the Treasury of the United States" is a restriction upon the power of States and not upon the power of Congress.

Petitioner argues further that the tax in this case was imposed upon "imports", and that under Article I, Sec. 8 of the Federal Constitution the proceeds of such tax are required to be used "to pay the debts and provide for the common defense and general welfare of the United States" (Pet. brief, p. 6), and that here that requirement is not met as the proceeds "go solely to the payment of District of Columbia obligations." This argument is manifestly unsound.

Like the commerce clause, Clause 2 of Article I, Sec. 10 of the Constitution is a limitation upon the power of the

several States and constitutes no restriction on the power of the Federal Congress in legislating for the District. So also is the further limitation in said Clause 2, requiring the consent of the Federal Congress for a State to tax imports or exports and providing that the proceeds from all duties and imposts laid by any State shall be for the use of the Treasury of the United States, a limitation upon the power of the States and not that of Congress.

Moreover, even if the foregoing requirement had any application to local tax statutes enacted for the District by Congress, the requirement has been met. As the court below so aptly pointed out (R. 23),

> "* * * That the proceeds of all local taxes go into the Treasury of the United States, albeit credited to special accounts therein, is one of the best known and most debated features of the local government. So, if that requirement pertains to the tax in the case at bar, it has been met."

CONCLUSION

For the reasons hereinbefore stated, it is respectfully submitted that the petition for writ of certiorari should be denied.

VERNON E. WEST,
Corporation Counsel, D. C.,

CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.,

GEORGE C. UPDEGRAFF,
Assistant Corporation Counsel, D. C.,
Attorneys for Respondent,
District Building,
Washington 4, D. C.